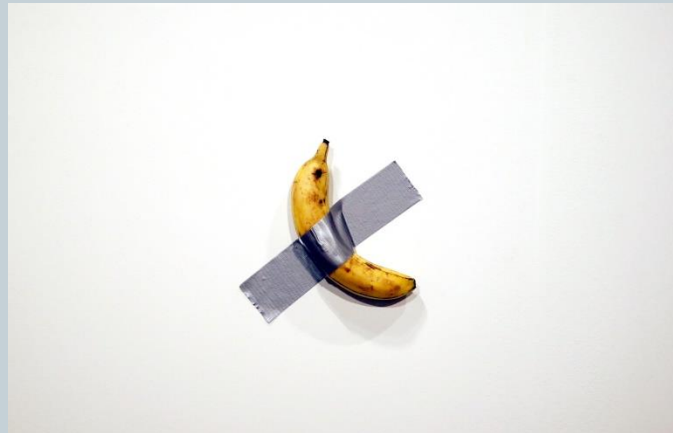


# Art and Technology: A Survey of Modern Copyright Law



BECK ROAN  
IP SECTION OF ISB  
12/19/19



<https://www.nytimes.com/2019/12/08/arts/design/banana-removed-art-basel.html>

# Introduction - Maurizio Cattelan



An artist created a solid-gold toilet for the Guggenheim. And, yes, it is fully functional.  
[nyer.cm/5RGaCIL](https://www.nyer.cm/5RGaCIL)



<https://www.bbc.com/news/world-us-canada-37370109>



<https://news.artnet.com/market/art-basel-maurizio-cattelan-banana-memes-1726233>

**\$120,000 Banana**

**18K Gold Toilet**

# Bananas Everywhere



<https://www.androidpolice.com/2019/12/13/nokias-twitter-account-pokes-fun-at-the-120000-art-basel-banana/>



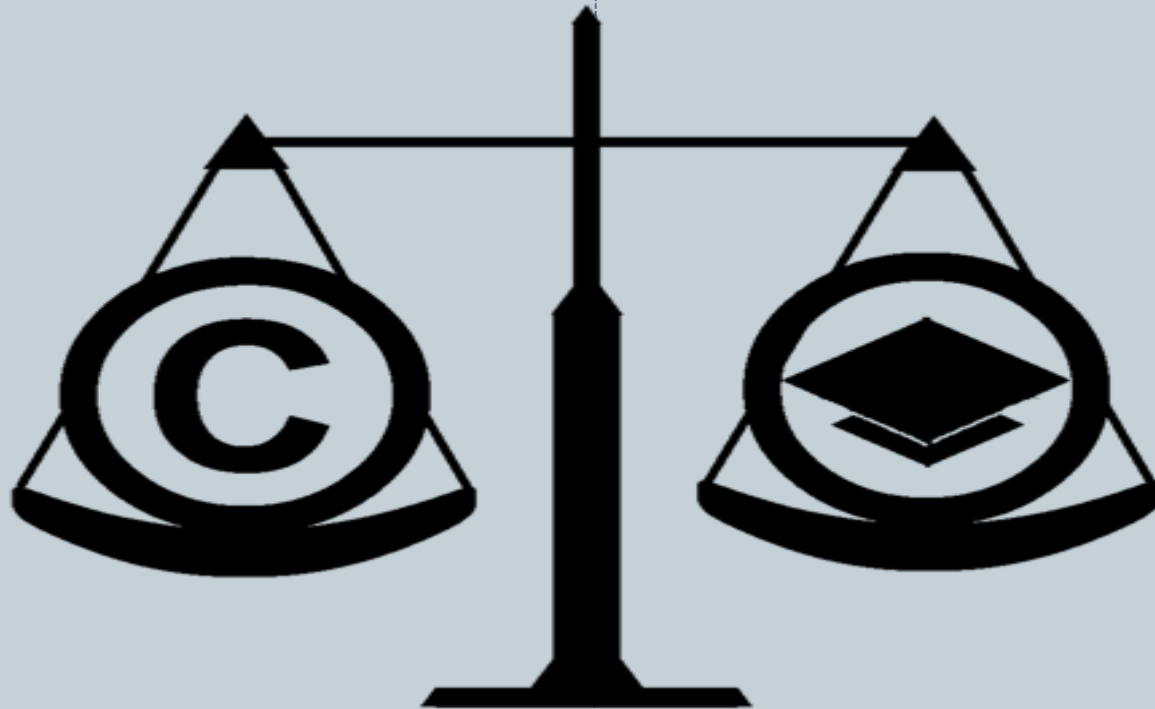
<https://digitalagencynetwork.com/burger-king-makes-it-to-the-duct-tape-trend-and-makes-fun-of-maurizio-cattelan-120000-banana/>



<https://www.dazeddigital.com/fashion/article/47133/1/instagram-artist-nike-air-force-afis-content-leon-zhan-miami-basel-banana>

# Copyright and Fair Use

- Exclusivity in copyright
- Exception to exclusivity – fair use



# Fair Use - Timeline



*Folsom v. Marsh*



Copyright Act of 1976



“Market-centered” paradigm (1976 – 1990s)



Transformative Use Test (1990s – present)

# Fair Use - Historically



Section 107 of the Copyright Act (of 1976), considers 4 factors:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

# Fair Use - Timeline



*Folsom v. Marsh*



Copyright Act of 1976



“Market-centered” paradigm (1976 – 1990s)



Transformative Use Test (1990s – present)

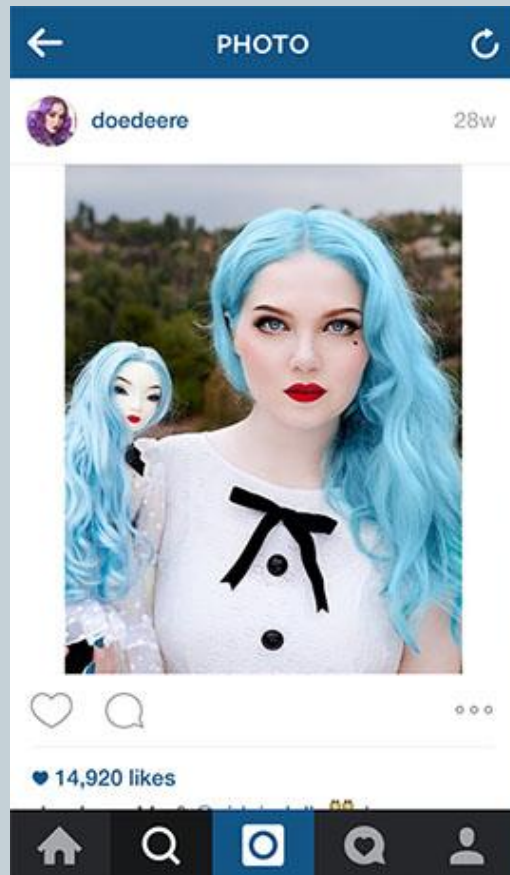
# Transformative Use Test



- A secondary use is “transformative” of the original work if that new use “adds value to the original ... [or if the original work] is used as raw material, transformed in the creation of new information, new aesthetics, new insights, and new understandings”
  - Judge Pierre Leval – ‘Toward a Fair Use Standard’ 1990 Harvard Law Review
- *Campbell v. Acuff-Rose*, 510 U.S. 569 (1994)
  - “Transformation” meant that the work “add[ed] something new, with a further purpose or different character, altering the first with new expression, meaning, or message.”



# Transformative Use in Art - Richard Prince



<https://petapixel.com/2015/05/21/richard-prince-selling-other-peoples-instagram-shots-without-permission-for-100k/>

# Transformative Use in Art - Richard Prince



<https://www.nytimes.com/2013/04/26/arts/design/appeals-court-ruling-favors-richard-prince-in-copyright-case.html>

Patrick Cariou photo, from "Yes Rasta"



RICHARD PRINCE  
*Graduation*, 2008  
Collage, inkjet, and acrylic on canvas  
72 3/4 x 52 1/2 inches (185 x 133 cm)

<https://judybachdigitalimageandculture.wordpress.com/2018/04/07/john-stezaker-richard-prince-me/#jp-carousel-1838>

# Transformative Use in Art – Jeff Koons



ANDREA BLANCH Silk Gucci sandals



Jeff Koons Niagara

*Blanch v. Koons*



Art Rogers

*Rogers v. Koons*



Jeff Koons

*United Features Syndicate v. Koons*



Jim Davis - "Odie"



Jeff Koons - "Wild Boy and Puppy"

<https://www.owe.com/resources/legalities/30-jeff-koons-copyright-infringement/>



# Transformative Use in Art – Mr. Brainwash



<https://www.lawweekly.com/judge-rules-run-dmc-photo-used-by-l-a-street-artist-mr-brainwash-protected-by-copyright-law-what-will-it-mean-for-fair-use/>

Thierry Guetta, a.k.a., ‘Mr. Brainwash’

# Transformative Use in Art – Mr. Brainwash



Run-DMC – photo by Glen E. Friedman



<https://www.laweekly.com/judge-rules-run-dmc-photo-used-by-l-a-street-artist-mr-brainwash-protected-by-copyright-law-what-will-it-mean-for-fair-use/>

Mr. Brainwash





# Graffiti – 5POINTZ



<https://news.artnet.com/art-world/5pointz-graffiti-art-vara-lawsuit-1234652>

# Graffiti - REVOK



<https://www.juxtapoz.com/news/graffiti/new-update-h-m-is-not-dropping-their-lawsuit-on-revok-as-previously-implied-and-apologized-for/>

# Fair Use Applied to Technology



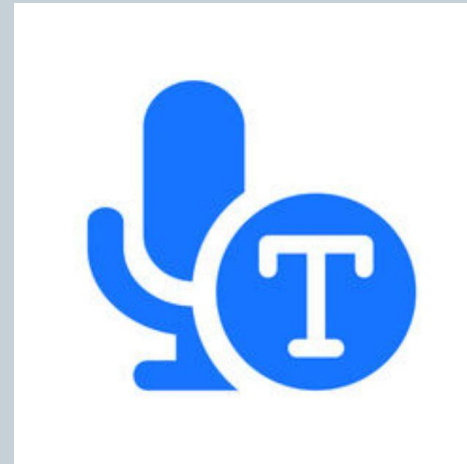
<https://www.connollymusic.com/stringovation/characteristics-great-concertmaster>



<https://gadgetmill.co.uk/sell-my/ipod-classic-1st-generation/>



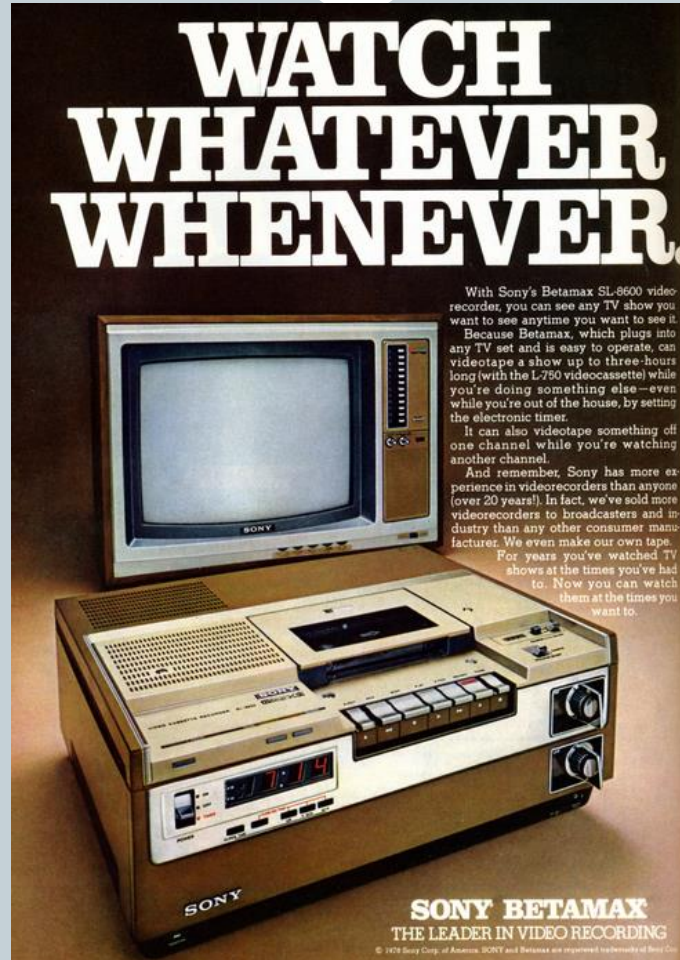
<https://thefunambulist.net/architectural-projects>



<https://www.thebalancesmb.com/best-voice-to-text-apps-4583053>



# Fair Use Applied to Technology - Sony



**WATCH  
WHATEVER  
WHENEVER.**

With Sony's Betamax SL-8600 video recorder, you can see any TV show you want to see anytime you want to see it.

Because Betamax, which plugs into any TV set and is easy to operate, can videotape a show up to three-hours long (with the L-750 videocassette) while you're doing something else—even while you're out of the house, by setting the electronic timer.

It can also videotape something off one channel while you're watching another channel.

And remember, Sony has more experience in videorecorders than anyone (over 20 years!). In fact, we've sold more videorecorders to broadcasters and industry than any other consumer manufacturer. We even make our own tape.

For years you've watched TV shows at the times you've had to. Now you can watch them at the times you want to.

**SONY BETAMAX**  
THE LEADER IN VIDEO RECORDING

© 1978 Sony Corp. of America. SONY and Betamax are registered trademarks of Sony Corp.

<https://consumerist.com/2014/01/17/on-this-day-in-1984-the-supreme-court-saved-the-vcr-from-certain-death/>

# Google Books and Scanning



- 2003 Google Book Robot

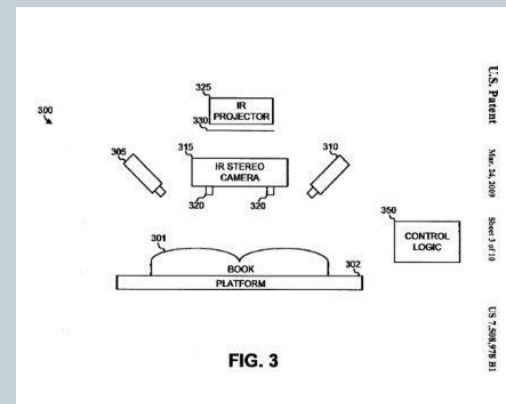
- “Google has developed innovative technology to scan the contents of books without harming them. In addition, we won't scan any book that we or our library partners deem too fragile, and once we've scanned a book, it is promptly returned to the library collection”

*-About the Google Library Project*

- 2009 Patent for InfraRed Technology

- Robot scanners

- Japanese high speed book scanner



# Copyright Law for Books



- (1) Public Domain
- (2) In Print & Under Copyright
- (3) “Orphan Works”

